

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ANTHONY VARGAS GONZALES, §
(TDCJ # 1159279), §
Petitioner, §
VS. § CIVIL ACTION NO. 4:05-CV-284-Y
§
DOUGLAS DRETKE, Director, §
T.D.C.J., Correctional §
Institutions Div., §
Respondent. §

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

Before the Court is the petition for writ of habeas corpus under 28 U.S.C. § 2254 of petitioner Anthony Vargas Gonzales, along with the November 4, 2005, findings, conclusions, and recommendation of the United States magistrate judge. The magistrate judge gave the parties until November 25, 2005, to file written objections to the findings, conclusions, and recommendation. As of the date of this order, no written objections have been filed.

The Court has reviewed the pleadings and the record in this case and has reviewed for clear error the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on November 4, 2005. The Court concludes that the petition for writ of habeas corpus should be dismissed with prejudice in part, and denied in part, for the reasons stated in the magistrate judge's findings and conclusions.

It is therefore ORDERED that the findings, conclusions and recommendation of the magistrate judge should be, and are hereby, ADOPTED as modified herein.

Gonzales's claims in the petition under 28 U.S.C. § 2254 that his conviction was obtained by the use of evidence gained from an unconstitutional search and seizure (ground 1); that his conviction was obtained by the use of perjured testimony (ground 2); that his conviction was obtained by prosecutorial misconduct (ground 3); and that his conviction was obtained by the trial court's abuse of discretion in denying his motion for mistrial after the state's alleged improper jury argument (ground 4), are DISMISSED WITH PREJUDICE as procedurally barred from this Court's review.

Gonzales's remaining claim that the prosecutor engaged in improper jury argument by commenting on his failure to testify (raised in grounds 3 and 4) is DENIED.

SIGNED December 5, 2005.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE